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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,990	12/01/2003	Yoshio Tomoda	03727/HG	4923
1933	7590	08/17/2005	EXAMINER	
FRISHAUF, HOLTZ, GOODMAN & CHICK, PC 220 5TH AVE FL 16 NEW YORK, NY 10001-7708			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER

1761

DATE MAILED: 08/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/725,990

Applicant(s)

TOMODA ET AL.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

On page 6, the specification recites " Brief Description of the Several Views of the Drawing"; it is not clear what is meant by this because there is only one drawing. Clarification is requested.

Claims 1,3,13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1: Lines 9-11 are indefinite because it is not clear if the peptide is included in the Markush group or not. Also, what does applicant mean by " peptide complex of peptides"?

In claim 3: Lines 5-6 are indefinite because it is not known if the claim is reciting separate amino acids or di-peptides.

In claim 13, the phrase " acrylamide was lowered" is indefinite; lower in comparison to what?

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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Claims 1-2, 4,7, 9-10 and 12-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Kuechle et al.

Kuechle et al disclose a method of preparing a dough to be cooked under heat. The dough comprises flour, protein supplements including amino acids as listed on col. 4 lines 49-58. The dough can be baked to prepare a variety of baked goods including biscuits, dumplings, flat bread, crackers, pizza, doughnut, fritters, hushpuppies, pastry etc.. ( see also col. 3 lines 34-48)

Kuechle et al disclose a method of preparing food to be cooked under heat because the dough is used to prepare the food products listed and the products are cooked under heat. The recitation of " which is capable of decreasing acrylamide" in the preamble does not limit claim 1 because the body of the claim following the preamble is a self-contained description of the method and does not depend on the preamble for completeness. The amino acids disclosed in Kuechle et al are the same as the ones in claim 2. The food contains flour which meets the limitation of claim 4. With respect to claim 7, the foods include baked confectionery, snack, and dumplings are foods having sheet of dough made of cereal flour. With respect to the properties in claims 9, 12, 13, such properties are inherent in the Kuechle et al method because the same amino acids are added and the food is subjected to heating. With respect to claims 10, Kuechle et al disclose subjecting the food to be cooked under heat.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3, 5-6,8,11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuechle et al.

Kuechle et al do not disclose heating that is not lower than 120 degree C, frying, stir-frying or roasting, the salt and peptide of claim 3, some of the food product of claim 8 and preparing cooked food.

The heating temperature varies with the type of food. The temperature range claimed is conventional for baked product. It would have been obvious to one to use such heating range to make the food products disclosed in Kuechle et al. While Kuechle et al disclose the dough can be baked, it would have been obvious to fry the dough depending on the type of food products prepared from the dough. For example, donut , fritters, hushpuppies are commonly fried, not baked. Kuechle et al disclose adding amino acid or protein; thus, it would have been obvious to add protein containing the amino acid or the salt of the amino acids. It would have been obvious to heat the food products to prepare cooked food products.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Jaeggi discloses flavoring compositions containing amino acid used in food products.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

August 16, 2005

  
LIEN TRAN  
PRIMARY EXAMINER  
Group 1700